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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 587

CONSOLIDATED TEXTILE CORPORATION
APPELLANT,

vs.

JOHN J. GREGORY, JUDGE OF THE CIRCUIT COURT OF MILWAUKEE COUNTY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

WALTER L. GOLD,
RAY T. McCANN,
MORRIS KARON,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 587

CONSOLIDATED TEXTILE CORPORATION,
A CORPORATION, APPELLANT,

vs.

JOHN J. GREGORY, JUDGE OF THE CIRCUIT COURT OF MILWAUKEE COUNTY.

APPELLEE'S STATEMENT AGAINST THE JURISDICTION OF THIS COURT, AND MOTION TO DISMISS OR AFFIRM.

MAY IT PLEASE THE COURT:

Pursuant to Rule 12, paragraph 3, the appellee submits his statement opposing the jurisdiction of this Court to review the judgment in the above entitled cause and includes herewith a motion to dismiss this appeal, or, in the alternative, to affirm the judgment of the Supreme Court of the State of Wisconsin from which this appeal is taken. In this behalf, the appellee respectfully represents:

A.

Nature of Case and Ruling Below.

Katherine Gold, a citizen and resident of Milwaukee, Wisconsin, on January 14, 1932, commenced an action in the Circuit Court of Milwaukee County, Wisconsin, against appellant, Consolidated Textile Corporation, for the recovery of $2,500 and interest on certain negotiable bonds sold by appellant. Service was obtained upon appellant by serving the summons and complaint upon Mr. Rupprecht, president of the appellant, while he was in Milwaukee. Appellant appeared specially in the circuit court and moved to set aside the service. The motion was denied and judgment was entered in favor of Katherine Gold upon default on July 1, 1932. Thereafter appellant petitioned the Supreme Court of Wisconsin for a writ of prohibition to restrain Judge Gregory, the judge of the Circuit Court of Milwaukee County, from further proceeding in the Katherine Gold action against appellant. The Supreme Court of Wisconsin granted an alternative writ commanding Judge Gregory to show cause why he should not be restrained from further proceeding in that action and the judge made his return to the alternative writ.

Some of the claims in appellant's "Statement of Facts" (pp. 5-7 of appellant's statement as to jurisdiction)—that the Stegeman action commenced in the New York court was on behalf of the Wisconsin bondholders, that no judgment had been granted in that action, and that Mr. Rupprecht came to Milwaukee merely to discuss the New York action with Mr. Gold,

are untrue and against the undisputed facts contained in the record. In his return to the alternative writ, the circuit judge stated the facts as he found them with reference to the service of process upon appellant's president when he came to Wisconsin. The material portions of those findings are as follows:

(*a*) That Mr. Rupprecht, president of Consolidated Textile Corporation, was sent by the corporation to Wisconsin to attempt to settle the claims of Katherine Gold and six other Wisconsin bondholders, totalling over $15,000, against the corporation, with Walter L. Gold, their attorney, and at the time of the service of process upon him, he was in Wisconsin on the business of the corporation; that he was then engaged in conducting business of the corporation in Wisconsin; that he told Mr. Gold that he was then also in Wisconsin on the business of his corporation with several of its Wisconsin customers; and that the corporation had been doing business in Wisconsin through a wholly owned and controlled subsidiary corporation.

(*b*) The action of *Edythe H. Stegeman* v. *Consolidated Textile Corporation*, commenced in the New York court, was not brought on behalf of Katherine Gold or the other Wisconsin bondholders, had nothing to do with the Katherine Gold action, and a motion for summary judgment had been granted in favor of Stegeman in that action.

(*c*) Appellant's claim that its president was enticed into the State of Wisconsin is untrue and that claim was withdrawn by appellant in open court.

Appellant demurred to that return, thereby admitting the facts therein stated.

Wis. Stats., Section 262.09(13), quoted on page 4 of appellant's statement as to jurisdiction, provides that service may be made upon a foreign corporation by serving the summons and complaint upon

> "any such officer being within the state, or to any agent having charge of or conducting any business therefor in this state"

when the action is in favor of a resident of Wisconsin. The words "*such officer*" refer to the officers enumerated in *Wis Stats.*, Section 262.09(10) which enumerates the president, vice-president, secretary, treasurer, etc., as the officers to whom copies of process may be delivered.

Upon the admitted facts, the Supreme Court of Wisconsin held (*State, ex rel. Consolidated Textile Corporation* v. *Gregory, Judge,* — Wis. —, 245 N. W. 194) that by sending its president to Wisconsin to attempt to settle a number of claims of Wisconsin residents against it, appellant was present and conducting business in the State through the presence of its president and became amenable to service of process in Wisconsin under *Wis. Stats.*, Section 262.09(13). In so holding, the court followed a like ruling upon like facts in an earlier Wisconsin case decided in the year 1909, *Fond du Lac C. & B. Co.* v. *Henningsen Produce Co.*, 141 Wis. 70, 123 N. W. 640, and in its opinion the court also considered that its ruling was in accord with *Commercial Mut. Acc. Co.* v. *Davis*, 213 U. S. 245, 29

S. Ct. 445; *Premo Specialty Mfg. Co.* v. *Jersey Creme Co.*, 200 Fed. 352 (C. C. A., 9th Cir., 1912).

B.

Cases Believed to Oppose Jurisdiction of this Court.

This appeal does not present any substantial Federal question. Appellant claims it has been denied due process of law by the State court's ruling sustaining the service under the State statute which appellant claims is unconstitutional. But this court has decided a number of times that like State process service statutes were valid and not repugnant to the due process clause of the constitution and under such statutes sustained the service upon an officer or agent whom the foreign corporation sent into the State to represent it in connection with the matter sued on, even though the officer went into the State for that single transaction.

Commercial Mut. Acc. Co. v. *Davis*, 213 U. S. 245, 29 S. Ct. 445, 447-8;

Conn. Mut. Life Ins. Co. v. *Spratley*, 172 U. S. 602, 19 S. Ct. 308, 312.

Inferior Federal courts came to the same conclusion.

Meade Fibre Co. v. *Varn*, 3 Fed. (2d) 520 (C. C. A., 4th Cir., 1925, certiorari denied 269 U. S. 564, 46 S. Ct. 23);

Premo Specialty Mfg. Co. v. *Jersey Creme Co.*, 200 Fed. 352 (C. C. A., 9th Cir., 1912);

Dungan Hood & Co. v. *Bally*, 271 Fed. 517 (D. C. Pa., 1921);

Brush Creek C. & M. Co. v. *Morgan-Gardner El. Co.*, 136 Fed. 505 (C. C. Mo., 1905);
New Haven P. & B. Co. v. *Downington M. Co.*, 130 Fed. 605 (C. C. Conn., 1904);
Houston v. *Filer & S. Co.*, 85 Fed. 757 (C. C. Ill., 1898).

And so have State courts of last resort in addition to the Wisconsin court.

A. Harvey's Sons Mfg. Co. v. *Sterling M. Co.*, 225 N. W. 538 (Mich., 1929);
St. Mary's Oil Engine Co. v. *Jackson Ice & Fuel Co.*, 138 So. 834 (Ala., 1931);
Abbeville Electric L. & P. Co. v. *Western El. S. Co.*, 39 S. E. 559 (S. C., 1901).

The purpose of process service statutes of this type is to insure that the foreign corporation will receive reasonable notice of the commencement of the action through an authorized representative. *Denver & R. G. R. Co.* v. *Roller*, 100 Fed. 738, 741 (C. C. A., 9th Cir., 1900).

The due process clause of the Federal Constitution has not fixed the amount of business a foreign corporation must do in a state in order to be amenable to the process of its courts. This court has held that the states have great latitude in defining what constitutes "doing business" by foreign corporations within their borders for the purpose of making such corporations amenable to the process of their courts. *Green* v. *Chicago, etc., R. Co.*, 205 U. S. 530, 27 S. Ct. 595, 596; *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, 34 S. Ct. 944, 945.

It is the character and power of the one served as the agent of the corporation which is the test of the right to acquire jurisdiction over the foreign corporation. Due process merely prohibits the States from extending their authority beyond their jurisdiction so as to condemn the resident of another State only when neither his person nor his property is within the jurisdiction of the court rendering the judgment. *Riverside Cotton Mills* v. *Menefee*, 237 U. S. 589, 35 S. Ct. 579, 581.

Since a corporation can act only through individuals, when any individual officer or agent is acting within the authority committed to him, he is performing an act of the corporation, and the corporation must then be deemed to be physically present through the individual exercising its powers within the State. *St. Clair* v. *Cox*, 106 U. S. 350, 1 S. Ct. 354, 356, 361.

"The constant tendency of judicial decisions in modern times has been in the direction of putting corporations upon the same footing as natural persons in regard to the jurisdiction of suits by or against them." *Barrow S. S. Co.* v. *Kane*, 170 U. S. 100, 18 S. Ct. 526, 528.

Since *Fond du Lac C. & B. Co.* v. *Henningsen Produce Co.*, 141 Wis. 70, 123 N. W. 640, Wisconsin has been committed to the doctrine that a single transaction in the State by a foreign corporation constitutes "conducting any business" within the State under *Wis. Stats., section* 262.09 (13), so as to subject the foreign corporation to service of process in the State.

The determination of the question whether a foreign corporation is doing business within a state so

as to be subject to suit therein, depends upon the facts of each particular case. *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, 34 S. Ct. 944, 945; *St. Louis S. W. R. Co.* v. *Alexander*, 227 U. S. 218, 33 S. Ct. 245, 247. Of course, the facts of each case include not only the acts constituting the conducting of business, but also the language of the process service statute.

The cases cited by appellant at the top of page 12 in appellant's statement as to jurisdiction, which held the service of process invalid, are inapplicable and distinguishable because those cases were not based on due process but either (1) upon construction of the jurisdiction of the Federal courts under process service statutes which required the foreign corporation "to reside" or "to be found" or to be "an inhabitant" in the district, and such statutes were construed to require more than one transaction to be done in the district to make the corporation amenable to service of process there; or (2) the officer was in the State or district only on his private affairs and hence could not be deemed to represent the corporation at all. This distinguishing feature is pointed out in *Green* v. *Chicago B. & Q. R. Co.*, 205 U. S. 530, 27 S. Ct. 595, 596 and is apparent from the rulings in *St. Louis S. W. R. Co.* v. *Alexander*, 227 U. S. 218, 33 S. Ct. 245, and *Eastman Kodak Co.* v. *Southern P. M. Co.*, 273 U. S. 359, 47 S. Ct. 400, which sustained the service under more liberal process service statutes.

The other cases cited at the top of page 12 in appellant's statement as to jurisdiction, which sustained the service, *Commercial Mut. Acc. Co.* v. *Davis*, 213 U. S. 245, 29 S. Ct. 445, and *International Harvester*

Co. v. *Kentucky*, 234 U. S. 579, 34 S. Ct. 944, are not only against appellant's contentions but are in favor of appellee.

Even though the cause of action of Katherine Gold may have arisen out of a transaction outside the State (appellant's contention, but not necessarily true and not determined), that does not contitutionally prohibit the State from asserting jurisdiction over the foreign corporation on a cause of action in favor of a resident of the State.

Barrow S. S. Co. v. *Kane*, 170 U. S. 100, 18 S. Ct. 526, 30 A. L. R. 258;

New York L. E. & W. R. Co. v. *Estill*, 147 U. S. 591, 13 S. Ct. 444;

New England Mut. L. Ins. Co. v. *Woodworth*, 111 U. S. 138, 4 S. Ct. 364.

The cases cited at the bottom of page 12 of appellant's statement as to jurisdiction, relating to a State's power to assert jurisdiction over a foreign corporation on a cause of action arising outside the State, are wholly inapplicable because those are cases where service was made not upon an actual officer or agent of the corporation, but upon some State officer who was appointed by a State statute—an imputed or constructive agent created by statute. Those decisions are based upon the limited service allowed by the statutes themselves—the statutes authorizing service upon a State officer only when the transaction arose out of business transacted in the State, or the corporation had property in the State. Even so, the United States

Supreme Court expressly held that where substituted service is thus made upon an imputed or constructive agent, the service statute may, without violating due process, apply to causes of action arising out of transactions outside the State, where the service statute expressly or by local construction authorized service in such cases.

Pa. Fire Ins. Co. v. *Gold Issue M. & M. Co.*, 243 U. S. 93, 37 S. Ct. 344;

Louisville & N. R. Co. v. *Chatters*, 279 U. S. 320, 49 S. Ct. 329.

We therefore respectfully submit that there is no substantial Federal question involved on this appeal; that the questions raised on this appeal have been decided a number of times against the appellant's contentions, and the appeal should therefore be dismissed, or the judgment of the Supreme Court of Wisconsin from which this appeal is taken be affirmed.

Attached hereto is a motion to dismiss or affirm.

Respectfully submitted,

WALTER L. GOLD,
RAY T. McCANN,
MORRIS KARON,
Counsel for Appellee.

SUPREME COURT OF THE UNITED STATES.

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vs.

JOHN J. GREGORY, JUDGE OF THE CIRCUIT COURT OF MILWAUKEE COUNTY, APPELLEE.

MOTION TO DISMISS OR AFFIRM.

Comes now the appellee in the above entitled cause, by his counsel of record, and, pursuant to Rule 7, paragraph 4, of United States Supreme Court Rules, moves that the appeal in the above entitled cause be dismissed, or, in the alternative, the judgment of the Supreme Court of the State of Wisconsin from which the appeal is taken, be affirmed.

Dated December 20, 1932.

WALTER L. GOLD,
RAY T. McCANN,
MORRIS KARON,
Counsel for Appellee.

Service admitted this 20th day of December, 1932.

GEORGE B. HUDNALL,
LOUIS A. LECHER,
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